

### **30.7 Copy of Transfer Certificate to Borrower**

The Agent shall, as soon as reasonably practicable after it has executed a Transfer Certificate, send to the Borrower a copy of that Transfer Certificate.

### **30.8 Disclosure of information**

The Borrower hereby consents to each Finance Party and their respective officers and agents disclosing information relating to it and its accounts with each Finance Party including but not limited to details of any facilities, any security taken, transactions undertaken and balances and positions with each Finance Party, to:

- (a) the head office of each Finance Party, any of their respective subsidiaries or subsidiaries of their respective holding companies, Affiliates, representative and branch offices in any jurisdiction (together with the Finance Parties, the **Permitted Parties**);
- (b) professional advisers and service providers of the Permitted Parties who are under a duty of confidentiality to the Permitted Parties;
- (c) any actual or potential assignee, novatee, transferee, participant or sub-participant in relation to any of the Lenders' rights and/or obligations under any agreement (or any agent or adviser of any of the foregoing) provided that the person to whom the confidential information has been given is informed of its confidential nature and has agreed in writing to keep such information confidential;
- (d) any rating agency, insurer or insurance broker of, or direct or indirect provider of credit protection to any Permitted Party provided that the person to whom the confidential information has been given is informed of its confidential nature and requested to keep such information confidential; and
- (e) any court or tribunal or regulatory, supervisory, governmental or quasi-governmental authority with jurisdiction over the Permitted Parties,

for purposes in connection with the services provided or to be provided in respect of this Agreement by any Finance Party and facilitating each Finance Parties' management of the banking relationship between that Finance Party and/or its Affiliates and the Borrower.

## **31 Role of the Agent, the Arranger and the Issuing Bank**

### **31.1 Appointment of the Agent**

Each Lender:

- (a) appoints the Agent to act as its agent under and in connection with the Finance Documents; and
- (b) authorises the Agent to exercise the rights, powers, authorities and discretions specifically given to the Agent under or in connection with the Finance Documents together with any other incidental rights, powers, authorities and discretions.

### **31.2 Duties of the Agent**

- 31.2.1 Except as specifically provided in the Finance Documents or as required by applicable law, the Agent has no obligations or duties of any kind to any other Party under or in connection with any Finance Document.
- 31.2.2 The Agent shall promptly forward to a Party the original or a copy of any document which is delivered to the Agent for that Party by any other Party.
- 31.2.3 Except where a Finance Document specifically provides otherwise, the Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- 31.2.4 If the Agent receives notice from a Party referring to this Agreement, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the Finance Parties.
- 31.2.5 If the Agent is aware of the non-payment of any principal, interest, commitment fee or other fee payable to a Finance Party (other than the Agent or the Arranger) under this Agreement it shall promptly notify the other Finance Parties.
- 31.2.6 The Agent's duties under the Finance Documents are solely mechanical and administrative in nature.

### **31.3 Role of the Arranger and Issuing Bank**

Except as specifically provided in the Finance Documents, neither the Arranger nor the Issuing Bank has any obligations of any kind to any other Party under or in connection with any Finance Document.

### **31.4 No fiduciary duties**

- 31.4.1 Nothing in this Agreement constitutes the Agent, the Arranger or the Issuing Bank as a trustee or fiduciary of any other person.
- 31.4.2 Neither the Agent, the Arranger or the Issuing Bank shall be bound to account to any Lender for any sum or the profit element of any sum received by it for its own account.

### **31.5 Business with the Borrower**

The Agent, the Arranger, the Issuing Bank and any Affiliate of either of them may:

- (a) act in an agency, trustee, fiduciary or other capacity on behalf of any other banks or financial institutions providing facilities to the Borrower, or any Affiliate of the Borrower, as freely in all respects as if they had not been appointed to act for the Lenders under this Agreement in such capacity;
- (b) subscribe for, hold, be beneficially entitled to or dispose of shares or securities, or options or other rights to and interests in shares or securities in the Borrower or any Affiliate of the Borrower; and
- (c) accept deposits from, lend money to and generally engage in any kind of banking or other business with the Borrower and any Affiliate of the Borrower,

without any obligation to disclose to the Lenders, or to account to them for or in respect of, any such arrangement or activity to the Lenders.

### **31.6 Rights and discretions of the Agent and the Issuing Bank**

31.6.1 The Agent and the Issuing Bank may rely on:

- (a) any representation, warranty, notice or document believed by it to be genuine, correct and appropriately authorised; and
- (b) any statement made by any person regarding any matters which may reasonably be assumed to be within his knowledge or within his power to verify.

31.6.2 The Agent may assume (unless it has received notice to the contrary in its capacity as agent for the Lenders) that:

- (a) no Default has occurred (unless it has actual knowledge of a Default arising under Clause 28.1 (*Non-payment*));
- (b) any right, power, authority or discretion vested in any Party or the Majority Lenders has not been exercised.

31.6.3 The Agent may engage, pay for and rely on the advice or services of any lawyers, accountants, surveyors or other experts.

31.6.4 The Agent may act in relation to the Finance Documents through its personnel and agents.

31.6.5 The Agent may disclose to any other Party and to any person engaged by it or through whom it acts in accordance with this Clause 31 any information it reasonably believes it has received as agent under this Agreement.

31.6.6 Notwithstanding any other provision of any Finance Document to the contrary, neither the Agent nor the Arranger is obliged to do or omit to do anything if it would or might in its reasonable opinion constitute a breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality.

### **31.7 Majority Lenders' instructions**

31.7.1 Unless a contrary indication appears in a Finance Document, the Agent (subject to its legal obligations) shall (i) exercise any right, power, authority or discretion vested in it as Agent in accordance with any instructions given to it by the Majority Lenders (or, if so instructed by the Majority Lenders, refrain from exercising any right, power, authority or discretion vested in it as Agent) and (ii) not be liable for any act (or omission) if it acts (or refrains from taking any action) in accordance with an instruction of the Majority Lenders.

31.7.2 Unless a contrary indication appears in a Finance Document, any instructions given by the Majority Lenders will be binding on all the Finance Parties.

31.7.3 The Agent may refrain from acting in accordance with the instructions of the Majority Lenders (or, if appropriate, the Lenders) until it has received such security as it may require for any cost, loss or liability (together with any associated VAT) which it may incur in complying with the instructions.

31.7.4 In the absence of instructions from the Majority Lenders, (or, if appropriate, the Lenders) the Agent may act (or refrain from taking action) as it considers to be in the best interest of the Lenders.

31.7.5 The Agent is not authorised to act on behalf of a Lender (without first obtaining that Lender's consent) in any legal or arbitration proceedings relating to any Finance Document.

### **31.8 Responsibility for documentation and customer identification**

Neither the Agent nor the Arranger nor any of their respective officers, employees or agents from time to time is responsible for:

- (a) the adequacy, accuracy or completeness of any information (whether oral or written) supplied by the Agent, the Arranger, the Borrower or any other person given in or in connection with any Finance Document; or
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document or any other agreement, arrangement or document entered into, made or executed in anticipation of or in connection with any Finance Document.

### **31.9 Exclusion of liability**

31.9.1 Without limiting Clause 31.9.2, the Agent will not be liable for any action taken by it or not taken by it under or in connection with any Finance Document, unless directly caused by its gross negligence or wilful misconduct.

31.9.2 No Party (other than the Agent) may take any proceedings against any officer, employee or agent of the Agent in respect of any claim it might have against the Agent or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document and any officer, employee or agent of the Agent may rely on this Clause subject to Clause 1.3 (*Third party rights*) and the provisions of the Third Parties Act.

31.9.3 The Agent will not be liable for any delay (or any related consequences) in crediting an account with an amount required under the Finance Documents to be paid by the Agent if the Agent has taken all necessary steps as soon as reasonably practicable to comply with the regulations or operating procedures of any recognised clearing or settlement system used by the Agent for that purpose.

31.9.4 Notwithstanding the provisions of Clause 35 (*Payment mechanics*), the Agent shall not be liable to the Borrower or any Lender for the failure, or the consequences of any failure, of any cross-border payment system to effect same-day settlement to an account of the Borrower or any Lender.

31.9.5 Nothing in this Agreement shall oblige the Agent or the Arranger to carry out any "know your customer" or other checks in relation to any person on behalf of any Lender and each Lender confirms to the Agent and the Arranger that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Agent or the Arranger.

### **31.10 Lenders' indemnity to the Agent**

Each Lender shall (in proportion to its share of the Total Commitments or, if the Total Commitments are then zero, to its share of the Total Commitments immediately before their reduction to zero) indemnify the Agent, within three (3) Business Days of demand, against any

cost, loss or liability incurred by the Agent (otherwise than by reason of the Agent's gross negligence or wilful misconduct) in acting as Agent under the Finance Documents (except to the extent that the Agent has been reimbursed by the Borrower pursuant to a Finance Document).

### **31.11 Resignation of the Agent**

31.11.1 The Agent may resign and appoint one of its Affiliates acting through one of its offices as successor by giving notice to the other Finance Parties and the Borrower.

31.11.2 Alternatively the Agent may resign by giving notice to the other Finance Parties and the Borrower, in which case the Majority Lenders (after consultation with the Borrower) may appoint a successor Agent.

31.11.3 If the Majority Lenders have not appointed a successor Agent in accordance with Clause 31.11.2 within 30 days after notice of resignation was given, the Agent (after consultation with the Borrower) may appoint a successor Agent (acting through an office in the United Kingdom or any other member state of the European Communities).

31.11.4 The retiring Agent shall, at its own cost, make available to the successor Agent such documents and records and provide such assistance as the successor Agent may reasonably request for the purposes of performing its functions as Agent under the Finance Documents.

31.11.5 The Agent's resignation notice shall only take effect upon the appointment of a successor.

31.11.6 Upon the appointment of a successor, the retiring Agent shall be discharged from any further obligation in respect of the Finance Documents but shall remain entitled to the benefit of this Clause 31. Its successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.

31.11.7 After consultation with the Borrower, the Majority Lenders may, by notice to the Agent, require it to resign in accordance with Clause 31.11.2. In this event, the Agent shall resign in accordance with Clause 31.11.2.

### **31.12 Confidentiality**

31.12.1 In acting as agent for the Finance Parties under this Agreement, the Agent shall be regarded as acting through its agency division which shall be treated as a separate entity from any other of its divisions or departments.

31.12.2 If information is received by another division or department of the Agent, it may be treated as confidential to that division or department and the Agent shall not be deemed to have notice of it.

### **31.13 Relationship with the Lenders**

31.13.1 The Agent may treat each Lender as a Lender, entitled to payments under this Agreement and acting through its Facility Office unless it has received not less than five (5) Business Days' prior notice from that Lender to the contrary in accordance with the terms of this Agreement.

31.13.2 Each Lender shall supply the Agent with any information required by the Agent in order to calculate the Mandatory Cost in accordance with Schedule 5 (*Mandatory Cost formula*).

### **31.14 Credit appraisal by the Lenders**

Without affecting the responsibility of the Borrower for information supplied by it or on its behalf in connection with any Finance Document, each Lender confirms to the Agent and the Arranger that it has been, and will continue to be, solely responsible for making its own independent appraisal and investigation of all risks arising under or in connection with any Finance Document including:

- (a) the financial condition, status and nature of the Borrower and any surety for, or provider of any Security Interest in respect of, the Borrower's obligations;
- (b) the adequacy or value of any such Security Interest, or the title of any provider of any Security Interest;
- (c) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document;
- (d) whether that Lender has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under or in connection with any Finance Document, the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document; and
- (e) the adequacy, accuracy and completeness of any information provided by the Agent, any Party or by any other person under or in connection with any Finance Document, the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document.

### **31.15 Management Time**

Any amount payable to the Agent under Clause 18.3 (*Indemnity to the Agent*), Clause 20 (*Costs and expenses*) and Clause 31.10 (*Lenders' indemnity to the Agent*) shall include the cost of utilising the Agent's management time or other resources and will be calculated on the basis of such reasonable daily or hourly rates as the Agent may notify to the Borrower and the Lenders, and is in addition to any fee paid or payable to the Agent under Clause 15 (*Fees*).

### **31.16 Deduction from amounts payable by the Agent**

If any Party owes an amount to the Agent under the Finance Documents the Agent may, after giving notice to that Party, deduct an amount not exceeding that amount from any payment to that Party which the Agent would otherwise be obliged to make under the Finance Documents and apply the amount deducted in or towards satisfaction of the amount owed. For the purposes of the Finance Documents that Party shall be regarded as having received any amount so deducted.

## **32 Role of the Security Agent**

### **32.1 Appointment of the Security Agent**

- 32.1.1 Each Finance Party (other than the Security Agent) appoints the Security Agent to hold any Security Interest created by the Security Documents on trust for the Finance Parties.



32.1.2 The Security Agent and its Affiliates may each retain for its own account and benefit any fee, remuneration and profits paid to it in connection with:

- (a) its activities under the Finance Documents; and
- (b) its engagement in any kind of banking or other business with the Borrower.

## 32.2 Delegation

The Security Agent may delegate to any person on such terms (which may include the power to sub-delegate) and subject to such conditions as it thinks fit, all or any of the rights, powers, authorities and discretions vested in it by any of the Finance Documents and shall not be obliged to supervise any such delegate or sub-delegate or be responsible to any person for any loss incurred by reason of any act, omission, misconduct or default on the part of any such delegate or sub-delegate.

## 32.3 Separate Security Agents

32.3.1 The Security Agent may (whether for the purpose of complying with any law or regulation of any overseas jurisdiction, or for any other reason) appoint any person to act jointly with the Security Agent either as a separate trustee or as a co-trustee (each an **Appointee**) on such terms and subject to such conditions as the Security Agent thinks fit and with such of the rights, powers, authorities and discretions vested in the Security Agent by any Finance Document as may be conferred by the instrument of appointment of the Appointee.

32.3.2 The Security Agent may pay reasonable remuneration to any Appointee, together with any costs and expenses (including legal fees) reasonably incurred by the Appointee in connection with its appointment. All such remuneration, costs and expenses shall be treated, for the purposes of this Agreement and any Fee Letter, as paid or incurred by the Security Agent.

## 32.4 The Security Documents

32.4.1 Each Finance Party confirms its approval of the Security Documents and of any Security Interest intended to be created under them, and authorises and instructs the Security Agent, on its behalf:

- (a) to execute and deliver the Security Documents; and
- (b) to give any authorisations and confirmations to be given by the Security Agent under them.

32.4.2 The Security Agent may accept without enquiry the title (if any) which any person may have to any assets over which any Security Interest is intended to be created by the Security Documents, and shall not be liable to any other Party for any defect in or failure of any such title.

32.4.3 The Security Agent shall not be:

- (a) liable or responsible to any other Finance Party for any failure to perfect, protect, register, make any filing or give notice in respect of any Security Interest intended to be created by any Security Document, unless that failure arises directly from its own gross negligence or wilful misconduct;

- (b) obliged to insure any assets over which any Security Interest is intended to be created by any Security Document, to require any other person to maintain any such insurance, or to make any enquiry or conduct any investigation into the legality, validity, effectiveness, adequacy or enforceability of any insurance existing over any such asset; or
- (c) obliged to hold in its own possession any Security Document, title deed or other document relating to any assets over which any Security Interest is intended to be created by any Security Document.

### 32.5 Security Agent as proprietor

Each other Finance Party confirms that it does not wish to be registered as a joint proprietor of any Security Interest created pursuant to any Security Document and accordingly:

- (a) authorises the Security Agent to hold such Security Interest in its sole name as trustee for the Finance Parties; and
- (b) requests any relevant registry to register the Security Agent as a sole proprietor of any such Security Interest.

### 32.6 Investments

Except to the extent that a Security Document otherwise requires, any moneys received by the Security Agent under or pursuant to a Security Document may be:

- (a) invested in any investments which it may select and which are authorised by applicable law; or
- (b) placed on deposit at any bank or institution (including itself) on such terms as it may think fit,

in each case in the name or under the control of the Security Agent, and those moneys, together with any accrued income (net of any applicable Tax) shall be held by the Security Agent to the order of the Agent, and shall be payable to the Agent on demand.

### 32.7 Lenders' indemnity to the Security Agent

Each Lender shall (in proportion to its share of the Total Commitments or, if the Total Commitments are then zero, to its share of the Total Commitments immediately before their reduction to zero) indemnify the Security Agent, its delegates and sub-delegates and Appointees (each an **Indemnified Party**), within three (3) Business Days of demand, against any cost, loss or liability incurred by the Security Agent or the relevant Indemnified Party (otherwise than by reason of the gross negligence or wilful misconduct of the Security Agent or that Indemnified Party) in acting as Security Agent or its delegate, sub-delegate or Appointee under the Finance Documents (except to the extent that the Security Agent, or the relevant Indemnified Party has been reimbursed by the Borrower pursuant to a Finance Document).

### 32.8 Resignation of the Security Agent

The provisions of Clause 31.11 (*Resignation of the Agent*) shall apply to the Security Agent as they apply to the Agent, except that every appointment of a successor Security Agent shall be by deed.



### 32.9 Further provisions

All of the provisions of Clause 31, except for Clauses 31.1(a) (*Appointment of the Agent*), 31.2.6 (*Duties of the Agent*), 31.3 (*Role of the Arranger*), 31.4 (*No fiduciary duties*), 31.10 (*Lenders' indemnity to the Agent*) and 31.11 (*Resignation of the Agent*) shall apply to the Security Agent and its delegates, sub-delegates and Appointees (and, in the case of Clauses 31.8 (*Responsibility for documentation and customer identification*) and Clauses 31.9.1 and 31.9.2 (*Exclusion of liability*), to their respective officers, employees and agents) as they apply to the Agent, so that references to the Agent in those Clauses shall be construed also as references to the Security Agent, its delegates, sub-delegates and Appointees.

### 33 Conduct of business by the Finance Parties

No provision of this Agreement will:

- (a) interfere with the right of any Finance Party to arrange its affairs (tax or otherwise) in whatever manner it thinks fit;
- (b) oblige any Finance Party to investigate or claim any credit, relief, remission or repayment available to it or the extent, order and manner of any claim; or
- (c) oblige any Finance Party to disclose any information relating to its affairs (tax or otherwise) or any computations in respect of Tax.

### 34 Sharing among the Finance Parties

#### 34.1 Payments to Finance Parties

If a Finance Party (a **Recovering Finance Party**) receives or recovers any amount from the Borrower other than in accordance with Clause 35 (*Payment mechanics*) and applies that amount to a payment due under the Finance Documents then:

- (a) the Recovering Finance Party shall, within three (3) Business Days, notify details of the receipt or recovery to the Agent;
- (b) the Agent shall determine whether the receipt or recovery is in excess of the amount the Recovering Finance Party would have been paid had the receipt or recovery been received or made by the Agent and distributed in accordance with Clause 35 (*Payment mechanics*), without taking account of any Tax which would be imposed on the Agent in relation to the receipt, recovery or distribution; and
- (c) the Recovering Finance Party shall, within three (3) Business Days of demand by the Agent, pay to the Agent an amount (the **Sharing Payment**) equal to such receipt or recovery less any amount which the Agent determines may be retained by the Recovering Finance Party as its share of any payment to be made, in accordance with Clause 35.5 (*Partial payments*).

#### 34.2 Redistribution of payments

The Agent shall treat the Sharing Payment as if it had been paid by the Borrower and distribute it between the Finance Parties (other than the Recovering Finance Party) in accordance with Clause 35.5 (*Partial payments*).

### **34.3 Recovering Finance Party's rights**

- 34.3.1 On a distribution by the Agent under Clause 34.2 (*Redistribution of payments*), the Recovering Finance Party will be subrogated to the rights of the Finance Parties which have shared in the redistribution.
- 34.3.2 If and to the extent that the Recovering Finance Party is not able to rely on its rights under Clause 34.3.1, the Borrower shall be liable to the Recovering Finance Party for a debt equal to the Sharing Payment which is immediately due and payable.

### **34.4 Reversal of redistribution**

If any part of the Sharing Payment received or recovered by a Recovering Finance Party becomes repayable and is repaid by that Recovering Finance Party, then:

- (a) each Finance Party which has received a share of the relevant Sharing Payment pursuant to Clause 34.2 (*Redistribution of payments*) shall, upon request of the Agent, pay to the Agent for the account of that Recovering Finance Party an amount equal to the appropriate part of its share of the Sharing Payment (together with an amount as is necessary to reimburse that Recovering Finance Party for its proportion of any interest on the Sharing Payment which that Recovering Finance Party is required to pay); and
- (b) that Recovering Finance Party's rights of subrogation in respect of any reimbursement shall be cancelled and the Borrower will be liable to the reimbursing Finance Party for the amount so reimbursed.

### **34.5 Exceptions**

- 34.5.1 This Clause 34 shall not apply to the extent that the Recovering Finance Party would not, after making any payment pursuant to this Clause, have a valid and enforceable claim against the Borrower.
- 34.5.2 A Recovering Finance Party is not obliged to share with any other Finance Party any amount which the Recovering Finance Party has received or recovered as a result of taking legal or arbitration proceedings, if:
- (a) it notified that other Finance Party of the legal or arbitration proceedings; and
  - (b) that other Finance Party had an opportunity to participate in those legal or arbitration proceedings but did not do so as soon as reasonably practicable having received notice and did not take separate legal or arbitration proceedings.

## **35 Payment mechanics**

### **35.1 Payments to the Agent**

- 35.1.1 On each date on which the Borrower or a Lender is required to make a payment under a Finance Document, the Borrower or that Lender shall make the same available to the Agent (unless a contrary indication appears in a Finance Document) for value on the due date at the time and in such funds specified by the Agent as being customary at the time for settlement of transactions in the relevant currency in the place of payment.

- 35.1.2 Payment shall be made to such account in the principal financial centre of the country of that currency with such bank as the Agent specifies.

### **35.2 Distributions by the Agent**

Each payment received by the Agent under the Finance Documents for another Party shall, subject to Clause 35.3 (*Distributions to the Borrower*) and Clause 35.4 (*Clawback*) be made available by the Agent as soon as practicable after receipt to the Party entitled to receive payment in accordance with this Agreement (in the case of a Lender, for the account of its Facility Office), to such account as that Party may notify to the Agent by not less than five (5) Business Days' notice with a bank in the principal financial centre of the country of that currency.

### **35.3 Distributions to the Borrower**

The Agent may apply any amount received by it for the Borrower in or towards payment (on the date and in the currency and funds of receipt) of any amount due from the Borrower under the Finance Documents or in or towards purchase of any amount of any currency to be so applied.

### **35.4 Clawback**

- 35.4.1 Where a sum is to be paid to the Agent under the Finance Documents for another Party, the Agent is not obliged to pay that sum to that other Party (or to enter into or perform any related exchange contract) until it has been able to establish to its satisfaction that it has actually received that sum.
- 35.4.2 If the Agent pays an amount to another Party and it proves to be the case that the Agent had not actually received that amount, then the Party to whom that amount (or the proceeds of any related exchange contract) was paid by the Agent shall on demand refund the same to the Agent together with interest on that amount from the date of payment to the date of receipt by the Agent, calculated by the Agent to reflect its cost of funds.

### **35.5 Partial payments**

- 35.5.1 If the Agent receives a payment that is insufficient to discharge all the amounts then due and payable by the Borrower under the Finance Documents, the Agent shall apply that payment towards the obligations of the Borrower under the Finance Documents in the following order:
- (a) **first**, in or towards payment pro rata of any unpaid fees, costs and expenses of the Arranger, the Agent and the Security Agent under the Finance Documents;
  - (b) **secondly**, in or towards payment pro rata of any unpaid fees, costs and expenses of the Lenders under the Finance Documents;
  - (c) **thirdly**, in or towards payment pro rata of any accrued interest, fee or commission due but unpaid under this Agreement;
  - (d) **fourthly**, in or towards payment pro rata of any principal due but unpaid under this Agreement; and
  - (e) **fifthly**, in or towards payment pro rata of any other sum due but unpaid under the Finance Documents.

35.5.2 The Agent shall, if so directed by the Majority Lenders, vary the order set out in Clauses 35.5.1(a) to 35.5.1(e).

35.5.3 Clauses 35.5.1 and 35.5.2 will override any appropriation made by the Borrower.

**35.6 No set-off by the Borrower**

All payments to be made by the Borrower under the Finance Documents shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

**35.7 Business Days**

Any payment which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).

**35.8 Currency of account**

35.8.1 Subject to Clauses 35.8.2 and 35.8.3, Dollars is the currency of account and payment for any sum due from the Borrower under any Finance Document.

35.8.2 Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or Taxes are incurred.

35.8.3 Any amount expressed to be payable in a currency other than Dollars shall be paid in that other currency.

**35.9 Parallel Debt and Security**

For the purpose of ensuring and preserving the validity and continuity of the security rights created under or pursuant to the Security Documents, the Borrower hereby irrevocably and unconditionally undertakes to pay to the Security Agent any and all amounts due and payable by the Borrower to the Finance Parties (other than the Security Agent) under the Finance Documents and the Borrower and the Security Agent acknowledge that for this purpose that Borrower's obligations to the Finance Parties (other than the Security Agent) under the Finance Documents (the **Obligations**) are also obligations and liabilities of the Borrower to the Security Agent under the Finance Documents which are separate and independent from, and without prejudice to, the identical obligations which the Borrower has to the Finance Parties (other than the Security Agent) under the Finance Documents, PROVIDED THAT the amounts due and payable under this Clause 35.9 (the **Parallel Debt**) shall be decreased to the extent that the Borrower has paid any amounts to the Finance Parties or any of them in respect of the Obligations and vice versa and that the Parallel Debt shall not at any time exceed the aggregate of identical obligations which the Borrower has to the Finance Parties (other than the Security Agent) under the Finance Documents and vice versa. Except as expressly set out in this Clause 35.9, nothing in this Clause 35.9 shall in any way negate or affect the obligations which the Borrower has to the Finance Parties under the Finance Documents in respect of the Obligations. For the purpose of this Clause 35.9, the Security Agent acts in its own name and on behalf of itself and not as agent or representative of any other party hereto and any security rights granted to the Security Agent to secure the Parallel Debt are granted to the Security Agent in its capacity as creditor of the Parallel Debt.

### **35.10 Exercise of rights and obligations as joint creditor**

35.10.1 Without limiting or affecting the Security Agent's rights against the Borrower (whether under Clause 35.9 (*Parallel Debt and Security*) or this Clause 35.10 or under any other provisions of the Finance Documents) the Security Agent agrees with each other Finance Party (on a several and divided basis) that, subject as set out in the next sentence, it will not exercise its rights as a joint creditor with a Finance Party except with the consent of the relevant Finance Party and shall immediately apply all amounts recovered in respect of the Parallel Debt in accordance with Clause 35.5 (*Partial Payments*). However, for the avoidance of doubt, nothing in the previous sentence shall in any way limit the Security Agent's right to act in the protection or preservation of rights under or to enforce any Finance Document in accordance with the terms thereof (or to do any act reasonably incidental to any of the foregoing).

35.10.2 Without limiting or affecting the Security Agent's rights against the Borrower (whether under Clause 35.9 (*Parallel Debt and Security*) or this Clause 35.10 or under any provision of the Finance Documents), the Borrower and each Finance Party acknowledge that although the Security Agent is expressed to be a joint creditor with each other Finance Party under the Finance Documents under Clause 35.9 (*Parallel Debt and Security*) or this Clause 35.10, nothing in such clauses shall impose any obligation on the Security Agent to advance any sums to the Borrower or otherwise under the Finance Documents, except in its capacity as a Lender and, for the purposes of any votes taken pursuant to the Finance Documents, it shall not be regarded as having any Commitment other than any Commitment which it has in its capacity as a Lender.

### **36 Set-off**

A Finance Party may set off any matured obligation due from the Borrower under the Finance Documents (to the extent beneficially owned by that Finance Party) against any obligation (whether or not matured) owed by that Finance Party to the Borrower, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Finance Party may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

### **37 Notices**

#### **37.1 Communications in writing**

Any communication to be made under or in connection with the Finance Documents shall be made in writing and, unless otherwise stated, may be made by fax or letter.

#### **37.2 Addresses**

37.2.1 The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with the Finance Documents is:

- (a) in the case of the Borrower, that identified with its name in Clause 37.2.2;
- (b) in the case of each Lender, that notified in writing to the Agent on or before the date on which it becomes a Party; and

- (c) in the case of the Arranger, the Agent and the Security Agent, that identified with their respective names in Clause 37.2.2,

or any substitute address or fax number or department or officer as the Party may notify to the Agent (or the Agent may notify to the other Parties, if a change is made by the Agent) by not less than five (5) Business Days' notice.

37.2.2 The addresses referred to in Clause 37.2.1 are as follows:

(a) **The Borrower:**

Al Khaleej Sugar Company LLC  
Abu Dhabi Commercial Bank (ADCB) Building  
5th & 7th Floor,  
72 Riga Road  
Deira  
Dubai  
U.A.E.

Attention: Mr. Fazalur Rahman J.S. (DGM-FINANCE)/ Mr. Shehzad Yunus  
(MANAGER FINANCE & ACCOUNTS)

Fax: +971 4 295 6677/+971 4 295 8522/+971 4 294 4248

(b) **The Arranger:**

Standard Chartered Bank  
Dubai International Financial Centre  
Building One, DIFC Gate Precinct  
P.O. Box 999  
Dubai, U.A.E.

Attention: Stephan Riekert

Fax: + 971 4 428 2506

(c) **The Agent:**

Standard Chartered Bank  
Wholesale Banking  
Dubai International Financial Centre  
Building One, DIFC Gate Precinct  
P.O. Box 999,  
Dubai, U.A.E.

Attention: Head, Collateral Management

Fax: +971 4 369 6982



(d) **The Security Agent:**

Standard Chartered Bank  
Wholesale Banking  
Dubai International Financial Centre  
Building One, DIFC Gate Precinct  
P.O. Box 999,  
Dubai, U.A.E.

Attention: Head, Collateral Management  
Fax: +971 4 369 6982

**37.3 Delivery**

37.3.1 Any communication or document made or delivered by one person to another under or in connection with the Finance Documents will only be effective:

- (a) if by way of fax, when received in legible form; or
- (b) if by way of letter, (i) when it has been left at the relevant address or (ii) two (2) Business Days (or, in the case of airmail, five (5) Business Days) after being deposited in the post postage prepaid (or, as the case may be, airmail postage prepaid), in an envelope addressed to it at that address,

and, if a particular department or officer is specified as part of its address details provided under Clause 37.2 (*Addresses*), if addressed to that department or officer.

37.3.2 Any communication or document to be made or delivered to the Arranger, the Agent or the Security Agent will be effective only when actually received by the Arranger, the Agent or (as the case may be) the Security Agent and then only if it is expressly marked for the attention of the department or officer identified with respect to the Arranger, the Agent or (as the case may be) the Security Agent in Clause 37.2.2 (or any substitute department or officer as the Arranger, the Agent or (as the case may be) the Security Agent shall specify for this purpose).

37.3.3 All notices from or to the Borrower shall be sent through the Agent.

**37.4 Notification of address and fax number**

Promptly upon receipt of notification of an address or fax number or change of address or fax number pursuant to Clause 37.2 (*Addresses*) or changing its own address or fax number, the Agent shall notify the other Parties.

**37.5 Electronic communication**

37.5.1 Any communication to be made between the Agent and a Lender under or in connection with the Finance Documents may be made by electronic mail or other electronic means, if the Agent and the relevant Lender:

- (a) agree that, unless and until notified to the contrary, this is to be an accepted form of communication;
- (b) notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and

- (c) notify each other of any change to their address or any other such information supplied by them.

37.5.2 Any electronic communication made between the Agent and a Lender will be effective only when actually received in readable form and in the case of any electronic communication made by a Lender to the Agent only if it is addressed in such a manner as the Agent shall specify for this purpose.

### **37.6 English language**

37.6.1 Any notice given under or in connection with any Finance Document must be in English.

37.6.2 All other documents provided under or in connection with any Finance Document must be:

- (a) in English; or
- (b) if not in English, and if so required by the Agent, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

## **38 Calculations and certificates**

### **38.1 Accounts**

In any litigation or arbitration proceedings arising out of or in connection with a Finance Document, the entries made in the accounts maintained by a Finance Party are *prima facie* evidence of the matters to which they relate.

### **38.2 Certificates and determinations**

Any certification or determination by a Finance Party of a rate or amount under any Finance Document is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

### **38.3 Day count convention**

Any interest, commission or fee accruing under a Finance Document will accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of 360 days or, in any case where the practice in the relevant interbank market differs, in accordance with that market practice.

## **39 Partial invalidity**

If, at any time, any provision of the Finance Documents is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

## 40 Remedies and waivers

No failure to exercise, nor any delay in exercising, on the part of any Finance Party, any right or remedy under the Finance Documents shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in the Finance Documents are cumulative and not exclusive of any rights or remedies provided by law.

## 41 Amendments and waivers

### 41.1 Required consents

41.1.1 Subject to Clause 41.2 (*Exceptions*) any term of the Finance Documents may be amended or waived only with the written consent of the Majority Lenders and the Borrower, and any such amendment or waiver will be binding on all Parties.

41.1.2 The Agent may effect, on behalf of any Finance Party, any amendment or waiver permitted by this Clause.

### 41.2 Exceptions

41.2.1 An amendment or waiver that has the effect of changing or which relates to:

- (a) the definition of **Majority Lenders** in Clause 1.1 (*Definitions*);
- (b) an extension to the date of payment of any amount under the Finance Documents;
- (c) a reduction in the Margin or a reduction in the amount of any payment of principal, interest, fees or commission payable;
- (d) an increase in or an extension of any Commitment;
- (e) an extension of the Availability Period;
- (f) any provision which expressly requires the consent of all the Lenders;
- (g) Clause 2.2 (*Finance Parties' rights and obligations*), Clause 30 (*Changes to the Parties*) or this Clause 41;
- (h) a change in the currency of any payment under any Finance Document;
- (i) any change to Clauses 5.4 (*Repayment*), 10.2 (*Collection Account withdrawals*), 10 (*Prepayment and cancellation*), 12 (*Interest*), 13 (*Interest Periods*), 15.1 (*Commitment fee*), or 34 (*Sharing among the Finance Parties*);
- (j) a release or partial release of any Security Interest created pursuant to any Security Document (other than as contemplated by the Finance Documents); and
- (k) the requirement to provide all of the documents and other evidence listed in Schedule 2 (*Conditions precedent and conditions subsequent*) in accordance with Clause 5.1 (*Initial conditions precedent*),

shall not be made without the prior consent of all the Lenders.

- 41.2.2 An amendment or waiver which relates to, or would otherwise affect, the rights or obligations of the Arranger, the Agent, or the Security Agent may not be effected without the consent of the Arranger, the Agent, or, as the case may be, the Security Agent.

## **42 Counterparts**

Each Finance Document may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of the Finance Document.

## **43 Law and jurisdiction**

### **43.1 Law**

This Agreement, its interpretations and any non-contractual obligations arising from or in connection with it shall be governed by and shall be construed in accordance with English law.

### **43.2 Jurisdiction**

- 43.2.1 The Parties agree that the courts of England shall have jurisdiction to settle any disputes or proceedings which may arise in connection with any Finance Document (in this Clause referred to as **Proceedings**) and that any judgment or order of an English court in connection with any Finance Document is conclusive and binding on them and may be enforced against them in the courts of any other jurisdiction. This Clause 43.2.1 is for the benefit of the Finance Parties only and shall not limit the right of any Finance Party to bring Proceedings against the Borrower in connection with any Finance Document in any other court of competent jurisdiction or concurrently in more than one jurisdiction.

#### **43.2.2 The Borrower:**

- (a) waives any objections which it may have to the English courts on the grounds of venue or forum non conveniens or any similar grounds as regards any Proceedings; and
- (b) consents to service of process by post or in any other manner permitted by the relevant law.

### **43.3 Arbitration**

Notwithstanding Clause 43.2.1, it is agreed that any dispute arising out of or in connection with the Finance Documents, including any question regarding its existence, validity or termination, may at the option of the relevant Finance Party or Finance Parties be referred to and finally resolved by arbitration. If the relevant Finance Party or Finance Parties do not elect to submit a dispute to arbitration but proceeds pursuant to Clause 43.2.1, the Borrower shall not be entitled to submit claims by it to arbitration. Disputes submitted to arbitration shall be resolved in accordance with the Rules of Conciliation and Arbitration of the London Court of International Arbitration, which rules are deemed to be incorporated by reference into this Clause. The tribunal shall consist of three (3) arbitrators. Each Party shall nominate an arbitrator and the third arbitrator, who shall be the chairman of the tribunal, shall be appointed by the London Court of International Arbitration. The place of arbitration shall be London. The language of the arbitration shall be English. The tribunal shall give a written record of the award and reasons therefor.

#### **43.4 Consent to enforcement**

The Borrower consents generally in respect of any Proceedings arising out of or in connection with the Finance Documents to the giving of any relief or the issue of any process in connection with such Proceedings including the making, enforcement or execution against any property or assets whatsoever (irrespective of its use or intended use) of any order or judgment which may be made or given in such Proceedings.

#### **43.5 No immunity**

To the extent that the Borrower may be entitled in any jurisdiction to claim for itself or any of its property or assets immunity in respect of its obligations under the Finance Documents from service of process, jurisdiction, suit, judgment, execution, attachment (whether before judgment, in aid of execution or otherwise) or legal process or to the extent that in any jurisdiction there may be attributed to it or all or any of its property or assets immunity of that kind (whether or not claimed) the Borrower irrevocably agrees not to claim and irrevocably waives that immunity to the fullest extent permitted by the laws of that jurisdiction.

#### **43.6 Service of process**

Without prejudice to any other mode of service allowed under any relevant law, the Borrower:

- (a) irrevocably appoints Law Debenture Corporate Services Limited as its agent for service of process in relation to any proceedings before the English courts in connection with any Finance Document; and
- (b) agrees that failure by a process agent to notify the Borrower of the process will not invalidate the proceedings concerned.

This Agreement has been entered into on the date stated at the beginning of this Agreement.

## Schedule 1 - The Original Lenders

Name of Original Lender	Facility Office	Notice Details	Commitment
Standard Chartered Bank	Collateral Management Team Dubai International Financial Centre Building One, DIFC Gate Precinct P.O. Box 999 Dubai, U.A.E.	Dubai International Financial Centre Building One, DIFC Gate Precinct P.O. Box 999 Dubai, U.A.E.  Fax: + 971 4 369 6982 Attn: Head, Collateral Management	\$ 300,000,000



## Schedule 2 – Conditions Precedent and Conditions Subsequent

### Part 1 - Conditions precedent

The documents and other evidence referred to in Clause 5.1 (*Initial conditions precedent*) are as follows.

#### 1 The Borrower

- 1.1 Certified Copies of the industrial license, commercial registration certificate and chamber of commerce certificate of the Borrower.
- 1.2 Certified Copies of the memorandum and articles of association (together with any amendment agreements) or other constitutional documents of the Borrower.
- 1.3 A Certified Copy of the minutes of the Borrower's general assembly dated 5 November 2002.
- 1.4 A Certified Copy of the letter issued from the Department of Economic Development in Dubai dated 23 October 2008 confirming the reinsertion of Mr Jamal Majid Al Ghurair to the industrial license.
- 1.5 Certified Copies of all Authorisations of any governmental or other authority, bureau or agency required by the Borrower in connection with the execution, delivery, performance, validity or enforceability of the Finance Documents or any document to be delivered under the Finance Documents.
- 1.6 A certificate of the Borrower (signed by the Manager) confirming that borrowing the Total Commitments would not cause any borrowing or similar limit binding on the Borrower to be exceeded.
- 1.7 A certificate of the Borrower (signed by the Manager) certifying that each copy document relating to it specified in this Part 1 of Schedule 2 is correct, complete and in full force and effect as at a date no earlier than the date of this Agreement.
- 1.8 The Original Financial Statements.
- 1.9 Evidence that the process agent referred to in Clause 43.6 (*Service of process*) has accepted its appointment.
- 1.10 Evidence that the Borrower has provided all information and documents necessary to comply with all anti money laundering regulations to which the Lenders are subject.

#### 2 Finance Documents

- 2.1 This Agreement is duly executed by the Parties.
- 2.2 Each Security Document (other than the Tripartite Agreement) duly executed by the parties to it together with all documents deliverable with each of those Security Documents.
- 2.3 The Fee Letters duly countersigned by the parties to whom they are addressed.

2.4 The following documents duly executed by the parties to them:

- (a) the Collateral Management Agreements; and
- (b) a Waiver of Lien in relation to each Warehouse.

### **3 Legal opinions**

- 3.1 A legal opinion of SNR Denton, legal advisers to the Arranger, the Agent and the Security Agent, substantially in the form distributed to the Original Lenders before signing this Agreement.
- 3.2 A legal opinion of Hadeef & Partners, legal advisers to the Borrower in the United Arab Emirates, substantially in the form distributed to the Original Lenders before signing this Agreement.

### **4 Other documents and evidence**

- 4.1 Evidence that the fees, costs and expenses then due from the Borrower pursuant to Clause 15 (*Fees*) and Clause 20 (*Costs and expenses*) have been paid or will be paid by the first Utilisation Date.
- 4.2 Evidence that the Borrower maintains such policies of insurance in accordance with the requirements of Clause 24.9 (*Insurance*) and otherwise on such terms and in such amount as are satisfactory to the Agent.
- 4.3 Evidence that the Bank Accounts are open and operational.
- 4.4 Any other agreements, documents and evidence as the Agent may require and notify to the Borrower in connection with the Facility and the Finance Documents.
- 4.5 Evidence that all Commodities which are to be subject to a Security Interest created by a Security Document at the date of this Agreement are stored in the warehouse and unencumbered.

## **Part 2 - Conditions subsequent**

- 1 The Tripartite Agreement duly executed by the parties to it.
- 2 A Certified Copy of the Industrial License issued to the Borrower by the Department of Economic Development in Dubai:
  - (a) having an issue date after 20/12/1999 but before 19/12/2013;
  - (b) having an expiry date after October 2015; and
  - (c) stating that Mr Jamal Majed Al Ghurair is the Manager of the Borrower.

## Schedule 3 – Conditions Precedent for each Utilisation

### 1 The Borrower

A certificate of an authorised signatory of the Borrower certifying that each copy document relating to it specified in this Schedule 3 (*Conditions Precedent for each Utilisation*) is correct, complete and in full force and effect as at a date no earlier than the date of this Agreement.

### 2 Other documents and evidence – Utilisation in respect of Warehouse financing

#### 2.1 Where applicable:

- (a) either:
  - (i) a Warehouse Receipt in respect of the Commodities to be pledged; or
  - (ii) a clean set of shipped on board bills of lading with either three (3) originals blank endorsed or, where all three (3) originals are not available, one original and copies of the other two (2) originals blank endorsed, in each case marked "Freight collect/prepaid" as may be required; or
- (b) relevant commercial invoice(s);
- (c) confirmation that the containment of Commodity within the transporting vehicle/ship and the transporting vehicle/ship itself have been inspected and are fit for purpose;
- (d) certificate of origin; and
- (e) all other certificates or documents which may be applicable to enable the import/export of such proposed secured commodity in the relevant jurisdiction.

2.2 Evidence satisfactory to the Lender that the Commodities being financed by the relevant Utilisation are the subject of a valid and binding Security Document and that the relevant Security Document has been stamped and registered as appropriate.

2.3 Evidence that the Waiver of Lien relating to the Warehouse in which the relevant Commodity is to be stored subject to the relevant Collateral Management Agreement and the relevant Security Document is in place and is in full force and effect.

2.4 Evidence that the import of the relevant Commodity has been authorised by the appropriate authority in the jurisdiction into which it is being imported.

2.5 In relation to a Utilisation under the Letter of Credit Facility, evidence that an amount equal to the relevant Cash Margin has been paid into the Cash Margin Account.

### 3 Other documents and evidence – Utilisations in respect of payment under IDC

Where applicable:

- (a) relevant commercial invoice;

- (b) a clean set of shipped on board bills of lading with either three (3) originals blank endorsed or, where all three (3) originals are not available, one original and copies of the other two (2) originals blank endorsed, in each case marked "Freight collect/prepaid" as may be required;
  - (c) confirmation that the containment of Commodity within the transporting vehicle/ship and the transporting vehicle/ship itself have been inspected and are fit for purpose;
  - (d) certificate of origin; and
  - (e) all other certificates or documents which may be applicable to enable the import/export of such proposed secured commodity in the relevant jurisdiction.
- 4 Evidence that the fees, costs and expenses then due from the Borrower pursuant to Clause 15 (*Fees*) and Clause 20 (*Costs and expenses*) have been paid or will be paid by the relevant Utilisation Date.
- 5 Any other agreements, documents and evidence as the Agent may reasonably require and notify in advance of not less than 90 days to the Borrower in connection with the Facilities and/or the Finance Documents.

## Schedule 4 – Requests

### Part 1 - Utilisation Request for Import Finance Loans

From: Al Khaleej Sugar Company LLC

To: Standard Chartered Bank as Agent

Dated: [•]

Dear Sirs

#### **Al Khaleej Sugar Company LLC - \$375,000,000 revolving import finance facility agreement dated [•] (the Agreement)**

- 1 We refer to the Agreement. This is a Utilisation Request. Terms defined in the Agreement have the same meaning in this Utilisation Request unless given a different meaning in this Utilisation Request.
- 2 We wish to borrow a Loan on the following terms:  
  
Proposed Utilisation Date: [•] (or, if that is not a Business Day, the next Business Day)  
  
Amount: [•] or, if less, the Available Facility
- 3 We confirm that each condition specified in Clause 5.2 (*Further conditions precedent*) is satisfied on the date of this Utilisation Request.
- 4 The proceeds of this Loan should be credited to [our account *[insert account details]*]/remitted to the account of *[insert name of relevant supplier]*, *[insert account details]*.
- 5 The proposed Secured Commodity is:  
  
*[insert description of Commodity]*;
- 6 Documents to be provided:
  - (a) B/I details as received under IDC / LC
  - (b) Goods Delivery Certificate
- 7 This Utilisation Request is irrevocable.
- 8 Delivery Instructions:  
  
We confirm that prior to the proposed Utilisation Date, we shall have delivered to the Agent (or to the Collateral Manager on behalf of the Agent, if requested by the Agent) the following documents:
  - (a) *either:*
    - (i) *a Warehouse Receipt in respect of the Commodities to be pledged; or*

- (ii) *a clean set of shipped on board bills of lading with either three (3) originals blank endorsed or, where all three (3) originals are not available, one original and copies of the other two (2) originals, blank endorsed in each case marked "Freight collect/prepaid" as may be required; or*
- (b) *relevant commercial invoice(s);*
- (c) *certificate of origin; and*
- (d) *all other certificates or documents which may be applicable to enable the import/export of such proposed secured commodity in the relevant jurisdiction.*

Yours faithfully

.....  
authorised signatory for  
**Al Khaleej Sugar Company LLC**



## Part 2 - Utilisation Request for Letters of Credit

From: Al Khaleej Sugar Company LLC

To: Standard Chartered Bank as Agent

Standard Chartered Bank, United Arab Emirates

### Application for Issuance of Letter of Credit (LC)

For Bank Use

Ref No:

Attach additional sheets if there is insufficient space, to be signed by applicant's authorised signatories

Advise by: SWIFT Courier Mail		To be advised through any affiliate or correspondent of Standard Chartered Bank, United Arab Emirates
Applicant (Company Name & Address):		
Tel: Ref:		Expiry Date (dd/mm/yy):
Contact Person:		In country of: <input type="checkbox"/> Beneficiary <input type="checkbox"/> Applicant
Currency & Amount: [Figures & Words]		Beneficiary (Company Name & Address):
Amount Tolerance	Plus___% Minus___%	Tel: Contact Person:
L/C Available with ___(a)___ by ___(b)___		Email:
(a) <input type="checkbox"/> Advising Bank <input type="checkbox"/> Any Bank <input type="checkbox"/> Issuing Bank		Partial Shipment: <input type="checkbox"/> Permitted <input type="checkbox"/> Prohibited
(b) <input type="checkbox"/> Negotiation <input type="checkbox"/> Payment <input type="checkbox"/> Acceptance		Transshipment: <input type="checkbox"/> Permitted <input type="checkbox"/> Prohibited
<input type="checkbox"/> Deferred Payment		Shipment Details
Payment <input type="checkbox"/> Sight		Place of Receipt:
Tenor:		Port of Loading:
<input type="checkbox"/> _____ days after _____		Not later than (dd/mm/yy):
Goods & Services		Port of Discharge:

	Place of Destination:
<b>Incoterms ® 2010:</b>	
<b>Documents required:</b>	
<input type="checkbox"/> Multimodal Bills of Lading	<input type="checkbox"/> Marine Bills of Lading <input type="checkbox"/> Air Waybills (AWB) <input type="checkbox"/> Charter Party Bills of Lading <input type="checkbox"/> Cargo Receipts (CR)
No. of Documents: _____ originals _____ copies <i>[if not stated, default to BLs (3/3 original &amp; 1 NN copy), AWB &amp; CR (1 original &amp; 1 copy)]</i>	
Consignee: <input type="checkbox"/> Issuing Bank <input type="checkbox"/> To Order, Bank Endorsed <input type="checkbox"/> Applicant <input type="checkbox"/> Others (please specify) _____	
Freight: <input type="checkbox"/> Prepaid <input type="checkbox"/> Collect <input type="checkbox"/> Others (please specify) _____	
Delivery Order / Delivery Note Content (e.g. Names of signatories, Passport number etc): _____ _____	
<input type="checkbox"/> Insurance Certificate / Policy No. of Documents: _____ originals _____ copies <i>[if not stated, defaults to 2 originals &amp; 1 cop]</i> Insured Percentage _____ % invoice value <i>[if not stated, defaults to 110% of invoice value]</i> Covering: <input type="checkbox"/> ICC Marine Risk <input type="checkbox"/> ICC "A" <input type="checkbox"/> ICC "B" <input type="checkbox"/> ICC "C" <i>[if not ticked, defaults to ICC "A"]</i> <input type="checkbox"/> ICC Air Risks	
<input type="checkbox"/> Insured open cover lodged with Standard Chartered Bank, United Arab Emirates <input type="checkbox"/> Insured to be obtained at a later date Details of Open Cover (e.g. Insurance Company Name, Reference No., Contact details etc) _____ _____	
<b>Attach additional sheets if there is insufficient space, to be signed by applicant's authorised signatories</b>	
<input type="checkbox"/> Signed Invoices No. of Documents: _____ originals _____ copies	
<input type="checkbox"/> Packing List	

	No. of Documents: _____ originals _____ copies
<input type="checkbox"/> Certificate of Origin	
	No. of Documents: _____ originals _____ copies Country of Origin: _____
<input type="checkbox"/> Others (please specify)	
	No. of Documents: _____ originals _____ copies
<input type="checkbox"/> Others (please specify)	
	No. of Documents: _____ originals _____ copies
<input type="checkbox"/> Others (please specify)	
	No. of Documents: _____ originals _____ copies
<b>Additional Conditions:</b>	
<b>Confirmation</b> (if not ticked, default to 'Not required'):	<b>Transferrable</b> (if not ticked, default to 'Not required'):
<input type="checkbox"/> Required <input type="checkbox"/> Not required	<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>Advise Through Bank</b> (in addition to first advising bank – optional):	
<b>Charges:</b>	<b>Reimbursement:</b>
<input type="checkbox"/> All charges outside issuing bank's country including but not limited to advising, reimbursement and telecommunications fees are for the beneficiary's account.  <input type="checkbox"/> All charges are for applicant's account, except for the following: _____ _____  <input type="checkbox"/> Confirmation Charges for account of <input type="checkbox"/> Beneficiary <input type="checkbox"/> Applicant	<input type="checkbox"/> The nominated bank may claim SWIFT reimbursement (if not ticked, default will be for issuing bank to honour upon receipt of clean documents)  <input type="checkbox"/> Others (please specify)
<input type="checkbox"/> Present documents within _____ days after shipment date	
<b>Instructions to Issuing Bank</b>	
<input type="checkbox"/> Utilise FX forward contract reference no:	<input type="checkbox"/> Others (please specify):

<input type="checkbox"/> Debit all charges to our account no:		
<input type="checkbox"/> In settlement, debit principal drawings from our account:		
<input type="checkbox"/> Use export master LC proceeds to settle this back to back LC		
<b>We agree to be bound by the terms and conditions in the Standard Terms, General Trade Terms, and the Trade Service Supplement – Issuance of LC</b>	<b>Date:</b>	
	<b>S.V.</b>	<b>Applicant's Signature(s) and Stamp</b>

## Schedule 5 - Mandatory Cost formula

- 1 The Mandatory Cost is an addition to the interest rate to compensate the Lenders for the cost of compliance with (a) the requirements of the Bank of England and the Financial Services Authority (or, in either case, any other authority which replaces all or any of its functions) or (b) the requirements of the European Central Bank.
- 2 On the first day of each Interest Period (or as soon as possible thereafter) the Agent shall calculate, as a percentage rate, a rate (the **Additional Cost Rate**) for each Lender, in accordance with the paragraphs set out below. The Mandatory Cost will be calculated by the Agent as a weighted average of the Lenders' Additional Cost Rates (weighted in proportion to the percentage participation of each Lender in the relevant Loan) and will be expressed as a percentage rate per annum.
- 3 The Additional Cost Rate for any Lender lending from a Facility Office in a Participating Member State will be the percentage notified by that Lender to the Agent. This percentage will be certified by that Lender in its notice to the Agent to be its reasonable determination of the cost (expressed as a percentage of that Lender's participation in all Loans made from that Facility Office) of complying with the minimum reserve requirements of the European Central Bank in respect of loans made from that Facility Office.
- 4 The Additional Cost Rate for any Lender lending from a Facility Office in the United Kingdom will be calculated by the Agent as follows in relation to a Loan in Dollars:

$$\frac{E \times 0.01}{300} \text{ per cent per annum}$$

Where:

E is designed to compensate the Lenders for amounts payable under the Fees Rules and is calculated by the Agent as being the average of the most recent rates of charge supplied by the Reference Banks to the Agent pursuant to paragraph 6 below and expressed in pounds per £1,000,000.

- 5 For the purposes of this Schedule:
  - (a) **Special Deposits** has the meaning given to it from time to time under or pursuant to the Bank of England Act 1998 or (as may be appropriate) by the Bank of England;
  - (b) **Fees Rules** means the rules on periodic fees contained in the FSA Supervision Manual or such other law or regulation as may be in force from time to time in respect of the payment of fees for the acceptance of deposits;
  - (c) **Fee Tariffs** means the fee tariffs specified in the Fees Rules under the activity group A.1 Deposit acceptors (ignoring any minimum fee or zero rated fee required pursuant to the Fees Rules but taking into account any applicable discount rate);
  - (d) **Participating Member State** means any member state of the European Communities that adopts or has adopted the euro as its lawful currency in accordance with legislation of the European Community relating to Economic and Monetary Union; and
  - (e) **Tariff Base** has the meaning given to it in, and will be calculated in accordance with, the Fees Rules.

- 6 The Agent shall use its reasonable endeavours to obtain from each Reference Bank, and each Reference Bank that is a Party shall, as soon as practicable after publication by the Financial Services Authority, supply to the Agent, the rate of charge payable by that Reference Bank to the Financial Services Authority pursuant to the Fees Rules in respect of the relevant financial year of the Financial Services Authority (calculated for this purpose by that Reference Bank as being the average of the Fee Tariffs applicable to that Reference Bank for that financial year) and expressed in pounds per £1,000,000 of the Tariff Base of that Reference Bank.
- 7 Each Lender shall supply any information required by the Agent for the purpose of calculating its Additional Cost Rate. In particular, each Lender shall supply the following information on or before the date on which it becomes a Lender:
- (a) the jurisdiction of its Facility Office; and
  - (b) any other information that the Agent may reasonably require for such purpose.
- Each Lender shall promptly notify the Agent of any change to the information provided by it pursuant to this paragraph.
- 8 The rates of charge of each Reference Bank for the purpose of E above shall be determined by the Agent based upon the information supplied to, or obtained by, it pursuant to paragraphs 6 and 7 above and on the assumption that, unless a Lender notifies the Agent to the contrary, each Lender's obligations in relation to cash ratio deposits are the same as those of a typical bank from its jurisdiction of incorporation with a Facility Office in the same jurisdiction as its Facility Office.
- 9 The Agent shall have no liability to any person if such determination results in an Additional Cost Rate which over or under compensates any Lender and shall be entitled to assume that the information provided by, or obtained from, any Lender or Reference Bank pursuant to paragraphs 3, 6 and 7 above is true and correct in all respects.
- 10 The Agent shall distribute the additional amounts received as a result of the Mandatory Cost to the Lenders on the basis of the Additional Cost Rate for each Lender based on the information provided by each Lender and each Reference Bank pursuant to paragraphs 3, 6 and 7 above.
- 11 Any determination by the Agent pursuant to this Schedule in relation to the formula, the Mandatory Cost, an Additional Cost Rate or any amount payable to a Lender shall, in the absence of manifest error, be conclusive and binding on all Parties.
- 12 The Agent may from time to time, after consultation with the Borrower and the Lenders, determine and notify to all Parties any amendments which are required to be made to this Schedule in order to comply with any change in law, regulation or any requirements from time to time imposed by the Bank of England, the Financial Services Authority or the European Central Bank (or, in any case, any other authority which replaces all or any of its functions) and any such determination shall, in the absence of manifest error, be conclusive and binding on all Parties.



## Schedule 6 - Form of Transfer Certificate

To: Standard Chartered Bank as Agent

From: [●] (the **Existing Lender**) and [●] (the **New Lender**)

Dated: [●]

### **Al Khaleej Sugar Company LLC – revolving import finance Facility Agreement dated [●] (the Agreement)**

- 1 We refer to the Agreement. This is a Transfer Certificate. Terms defined in the Agreement have the same meaning in this Transfer Certificate unless given a different meaning in this Transfer Certificate.
- 2 We refer to Clause 30.6 (*Procedure for transfer*):
  - (a) The Existing Lender and the New Lender agree to the Existing Lender transferring to the New Lender by novation all or part of the Existing Lender's Commitment, rights, interests and obligations referred to in the Schedule in accordance with Clause 30.6.
  - (b) The proposed Transfer Date is [●].
  - (c) The Facility Office and address, fax number and attention details for notices of the New Lender for the purposes of Clause 37.2 (*Addresses*) are set out in the Schedule.
- 3 The New Lender expressly acknowledges the limitations on the Existing Lender's obligations set out in Clause 30.5.3.
- 4 This Transfer Certificate may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Transfer Certificate.
- 5 This Transfer Certificate is governed by English law.

### **The Schedule - Commitment/rights and obligations to be transferred**

All our Commitment and all our rights, interests and liabilities under the following Finance Documents<sup>1</sup>:

- (a) The Agreement
- (b) [●]

[insert Facility Office address, fax number and attention details for notices and account details for payments,]

<sup>1</sup> List all Finance Documents (including documents designated as such since the date of the Agreement) under which the Existing Lender is transferring its rights, interests and liabilities. There is no need to include any Security Documents in the list.

[Existing Lender]

[New Lender]

By: [•]

By: [•]

This Transfer Certificate is accepted by the Agent and the Transfer Date is confirmed as [•].

[Agent]

By: [•]

## Schedule 7 – Form of Compliance Certificate

To: Standard Chartered Bank as Agent

From: Al Khaleej Sugar Company LLC

Dated: [●]

Dear Sirs

### **Al Khaleej Sugar Company LLC – \$375,000,000 revolving import finance Facility Agreement dated [●] (the Agreement)**

- 1 We refer to the Agreement. This is a Compliance Certificate. Terms defined in the Agreement have the same meaning in this Compliance Certificate unless given a different meaning in this Compliance Certificate.
- 2 We confirm that: *[insert details of covenants to be certified]*
- 3 *[We confirm that no Default is continuing/] [Or identify and Default that is continuing and the steps, if any, being taken to remedy it.]*


Signed: .....

Manager of  
Al Khaleej Sugar Company LLC

## Execution pages

### The Borrower

Executed by **Al Khaleej Sugar Company LLC**  
and signed by person(s) who under the laws of the  
United Arab Emirates are acting under the authority  
of that company

Name:  JAMAL MAJID AL SHURAIR


Position:

Name:

Position:

### The Arranger

Executed by **Standard Chartered Bank** as Arranger  
and signed by person(s) acting under the authority of  
that bank

Name:  VIKRAM REDDY

Position: Regional Head LC & CTA, MENAP

Name:

Position:

### The Original Lenders

Executed by **Standard Chartered Bank** as Original  
Lender and signed by person(s) acting under the  
authority of that bank

Name:  VIKRAM REDDY

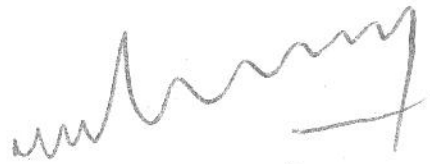
Position: Regional Head LC & CTA, MENAP

Name:

Position:

### The Agent

Executed by **Standard Chartered Bank** as Agent and signed by person(s) are acting under the authority of that bank



Name: VIKRAM REDDY

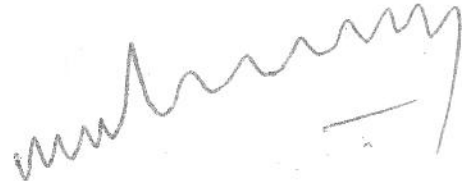
Position: Regional Head LC & CTA, MENAP

Name: \_\_\_\_\_

Position: \_\_\_\_\_

### The Security Agent

Executed by **Standard Chartered Bank** as Security Agent and signed by person(s) acting under the authority of that bank



Name: VIKRAM REDDY

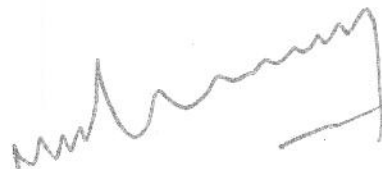
Position: Regional Head LC & CTA, MENAP

Name: \_\_\_\_\_

Position: \_\_\_\_\_

### The Issuing Bank

Executed by **Standard Chartered Bank** as Issuing Bank and signed by person(s) acting under the authority of that bank



Name: VIKRAM REDDY

Position: Regional Head LC & CTA, MENAP

Name: \_\_\_\_\_

Position: \_\_\_\_\_